**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 16641 of 2004**

**For Approval and Signature:**

**HON'BLE MR JUSTICE MR SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**DIVISIONAL CONTROLLER G.S.R.T.C. - Petitioner(s)**

**Versus**

**NATVERLAL K PATEL C/O.S.T.KARMACHARI MANDAL - Respondent(s)**

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**Appearance :**

MR HS MUNSHAW for Petitioner No(s).: 1.

RULE SERVED BY DS for Respondent No(s).: 1.

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**CORAM :HON'BLE MR JUSTICE MR SHAH**

**Date : 29/06/2005**

**ORAL JUDGMENT**

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner G.S.R.T.C has challenged the legality and validity of the judgment and award passed by the Industrial Tribunal, Ahmedabad dated 17th April, 2004 passed in Reference (IT) No.320 of

1995 by which the Tribunal has partly allowed the Reference by quashing and setting aside and/or substituting the order of punishment imposed by the appellate authority in exercise of the powers under Section-11-A of the Industrial Disputes Act.

2. The respondent workman was serving as the Conductor. On 10th July, 1992 when he was on duty on the route of Sabarmati – Gandhinagar, his bus was checked by the checking squad and it was found that he has not issued tickets to ten passengers till the bus was checked and he has not closed the way bill properly. It appears from the record that the report was prepared by the reporter and on the basis of the said report, the respondent workman was chargesheeted and after full fledge departmental inquiry and after giving an opportunity to the respondent workman and after holding the respondent workman guilty for the misconduct, the disciplinary authority imposed penalty of stoppage of five yearly increments with permanent future effect by order dated 30th October, 1992. Being aggrieved and dissatisfied with the aforesaid order of penalty, the respondent workman preferred First Appeal before the appellate authority of the Corporation and the said appeal came to be dismissed. The respondent workman preferred second appeal before the second

appellate authority and the second appellate authority reduced the penalty imposed by the disciplinary authority by imposing penalty of stoppage of yearly increment for three years with permanent future effect by order dated 14th September, 1994. Being aggrieved and dissatisfied with the same, the respondent workman raised the industrial dispute and approached the Industrial Tribunal, Ahmedabad by way of Reference (IT) No.320 of 1995. The respondent workman did not challenge the legality and validity of the departmental inquiry, however, challenged the finding. After considering the evidence on record and considering the admission on the part of the respondent workman before the Inquiry Officer to the effect that he has not issued ticket to ten passengers and inspite of having held that not issuing the tickets by the respondent workman was a clear negligence, however, only on the ground that there was no bad intention on the part of the respondent workman not to issue tickets, the Industrial Tribunal exercising the powers under Section-11-A of the Industrial Disputes Act, substituted the order of penalty imposed by the appellate authority by reducing the same from withholding of three yearly increments with future effect to withholding of three increments without future effect. Being aggrieved and dissatisfied with the same, the petitioner corporation has preferred the present Special Civil Application under

Articles 226 and 227 of the Constitution of India.

3. Shri H.S.Munshaw, learned advocate appearing on behalf of the petitioner has vehemently submitted that once having held by the Industrial Tribunal that charge against the respondent workman for not issuing the tickets to ten passengers having been proved, the tribunal ought not to have exercised the jurisdiction under Section-11-A of the I.D.Act by substituting the penalty. He has also further submitted that there was no order of dismissal or discharge imposed by the disciplinary authority and / or appellate authority which was challenged before the Industrial Tribunal, and therefore, the Industrial Tribunal has no jurisdiction to substitute the order of penalty exercising the powers under Section-11-A of the I.D.Act and the same is beyond the jurisdiction of the Industrial Tribunal. In support of the said submission, Shri H.S.Munshaw, learned advocate for the petitioner has placed reliance on the order passed by the Division Bench of this Court in Letters Patent Appeal No.1199 / 2002 in which the Division Bench of this Court has held that the labour court cannot exercise the powers under Section-11-A of the I.D.Act in cases in which the employer imposed punishment on the workman otherwise than by way of discharge or dismissal. He has also relied upon the judgment of the

Hon'ble Supreme Court of India in case of Karnataka State Road Transport Corporation vs. B.S.Hullykutti reported in 2001 (2) SCC 574 wherein the the Hon'ble Supreme Court of India was pleased observe in para-6 as under :

"It is misplaced sympathy by the labour court in such cases when on checking it is found that the bus conductor have either not issued the tickets to a large number of passengers though they should have, or have not issued the tickets of lower denomination knowing full well the correct fare to be charged. It is the responsibility of the bus conductors to collect the correct fare from the passengers and deposit the same with the company. They act in fiduciary capacity and it would be gross misconduct if knowingly they do not collect any fare or correct amount of fair."

4. Relying on the aforesaid observations, it is submitted that in the facts and circumstances of the case and more particularly when it is proved and even there is an admission by the respondent workman before the Inquiry Officer in the disciplinary inquiry proceedings that he has not issued tickets to ten passengers, the Tribunal was not justified in substituting the punishment, especially, in view of the past defaults 21 in numbers. Under the circumstances, it is requested to allow the

present Special Civil Application.

5. It is not in dispute that the charge against the respondent workman conductor for not issuing the tickets to ten passengers is proved and even the respondent conductor has also admitted the same in the departmental inquiry. It is also not in dispute that the respondent workman has not challenged the legality and validity of the inquiry and/or report submitted by the reporter. It is also not in dispute that the appellate authority has imposed penalty of withholding of three yearly increments with permanent future effect an the same was challenged by the respondent workman in reference. In view of the judgment of the Division Bench of this Court in Letters Patent Appeal No.1199 of 2002 in Special Civil Application No.1081 of 2002, the labour court and/or Industrial Tribunal cannot exercise the powers under Section-11-A of the I.D.Act in the cases in which the employer imposed penalty on the workman otherwise than by way of discharge or dismissal. As held by the Division Bench in the aforesaid judgment interfering with punishment of reduction to the basic of his pay scale imposed by the Corporation, the Industrial Tribunal concerned seems to have exceeded in its jurisdiction, the Industrial Tribunal, in the present case also while substituting the order of penalty by reducing it

to withholding of three yearly increments without permanent future effect from withholding of three yearly increments with future permanent effect is without jurisdiction and can be said to be exceeding the jurisdiction which requires to be quashed and set aside.

6. Even otherwise, as stated hereinabove, the charge against the respondent workman for not issuing the tickets to ten passengers is proved. Under the circumstances, where the charge against the respondent workman is proved and considering the observations of the Hon'ble Supreme Court of India made in para-6 of Karnataka State Road Transport Corporation (Supra), the judgment and award passed by the Industrial Tribunal in substituting the order of penalty by partly allowing the reference cannot be sustained and the same requires to be quashed and set aside.

7. For the reasons stated hereinabove, the Industrial Tribunal, Ahmedabad dated 14th April, 2004 passed in Reference (IT) No.320 of 1995 is hereby quashed and set aside.

Rule is made absolute to the aforesaid extent with no order as to costs.

[ M.R.Shah, J. ]

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